IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10830 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITENDRASINH ALIAS HITUBHA AJITSINH JADEJA

Versus

STATE OF GUJARATR

Appearance:

1. Special Civil Application No. 10830 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI ASST GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP for the other

side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 22.6.2004 passed by the District Magistrate, Bhavnagar under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a Bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. For exercising the powers under Section 3(2) read with Section 9 of the PASA Act, the detaining authority has considered mainly the fact of registration of three different offences punishable under the Bombay Prohibition Act by Bhavnagar "D" Division Police Station. These three offences have been registered between 23rd July, 2003 to 30th July, 2004. Actually, the first two offences have been registered on the very say day. So, according to Ms.Patel for the purpose of present petition, it should be considered as a single wrong and not two different independent act or activity, especially when the order of preventive detention is assailed invoking the jurisdiction of this Court under Article 226 of the Constitution. It is argued that fact of registration of three offences itself cannot be said to be an activity prejudicial to maintenance of public order. Of course, statements of four witnesses were there before the detaining authority recorded by the sponsoring authority.

#. The order under challenge is assailed on various grounds. However, she has concentrated her arguments mainly on the ground that the delay caused in passing the order of preventive detention would go to root of the validity of the order. This Court has consistently considered the date of registration of the last offence when delay in passing the order is made a ground challenging the validity of the order. The third offence is registered on 30th April, 2004 and date of detention is of 22nd June, 2004. Though the petitioner was arrested for third offence on 19th May, 2004 and was enlarged on bail on that very day, the sponsoring authority was not able to record the statements as to conduct or harmful activity to the society till 8th June, 2004. All the four statements have been recorded on 8th June, 2004. They were verified by the Dy.S.P. on 10th June, 2004 and by detaining authority on 17th June, 2004.

The time gap between registration of offence or the date of release of the accused on bail and recording of the statements of witnesses is more than reasonable. In the same way, verification of the statements has not been made promptly by the detaining authority that has resulted into delay in passing of the order of detention.

#. I would like to quote observations of this Court (Coram : J.R.Vora, J.) in Special Civil Application No.10182 of 2003 decided on 26th August, 2003 in para-6 of the decision, where the Court has observed that;

"6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystally emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing of the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this court in the matter of THAKORE GIRISHJI GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002 (1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, the detention order therefore cannot be

sustained and deserves to be quashed on this ground alone.

#. The Court is also inclined to accept the argument that with this background of fact, the registration of three criminal offences, two on the same day and one after interval of eight to nine months cannot be said to be a problem of public order and therefore, preventive order of detention shall have to be quashed and set aside.

#. The petition succeeds and the same is allowed. The order of detention dated 22.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu - HITENDRASINH ALIAS HITUBHA AJITSINH JADEJA who has been detained at Himatnagar Sub Jail at Himatnagar be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :22/12/2004 [C.K.Buch, J.]

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